

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Anders LARSSON et al

Application No.: 10/542,784

I. A. Filing Date: January 30, 2004

Filed: January 26, 2006

For: ...USE OF AVIAN ANTIBODIES

Customer Service Window, **Mail Stop Amendment**

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Randolph Building, 401 Dulany Street
Alexandria, Virginia 22314

Art Unit: 1644

Examiner: M.E. Szperka

Washington, D.C.

Atty.'s Docket: LARSSON=4

Confirmation No.: 9326

Date: March 7, 2007



IFW

Sir:

Transmitted herewith is a **REPLY TO RESTRICTION REQUIREMENT: AMENDMENT AND REMARKS** in the above-identified application.

☒ Small Entity Status: Applicant(s) claim small entity status. See 37 C.F.R. §1.27.

☒ No additional fee is required.

☐ The fee has been calculated as shown below:

(Col. 1)		(Col. 2)		(Col. 3)	SMALL ENTITY		OR	OTHER THAN SMALL ENTITY	
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA EQUALS	RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
TOTAL	*	MINUS	** 20	0	x 25	\$		x 50	\$
INDEP.	*	MINUS	*** 3	0	x 100	\$		x 200	\$
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM					+ 180	\$		+ 360	\$
					ADDITIONAL FEE TOTAL			TOTAL	

* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 20, write "20" in this space.

*** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment of the number of claims originally filed.

☒ Conditional Petition for Extension of Time

If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

☐ It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity

Response Filed Within

☐ First - \$ 60.00
☐ Second - \$ 225.00
☐ Third - \$ 510.00
☐ Fourth - \$ 795.00

Month After Time Period Set

Other Than Small Entity

Response Filed Within

☐ First - \$ 120.00
☐ Second - \$ 450.00
☐ Third - \$ 1020.00
☐ Fourth - \$ 1590.00

Month After Time Period Set

☐ Less fees (\$) already paid for month(s) extension of time on .

☐ Please charge my Deposit Account No. 02-4035 in the amount of \$.

☐ Credit Card Payment Form, PTO-2038, is attached, authorizing payment in the amount of \$.

☐ A check in the amount of \$ is attached (check no.).

☒ The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR §1.16 and all patent processing fees under 37 CFR §1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR §1.18.

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THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: LARSSON=4

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Anders LARSSON et al)	Art Unit: 1644
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U.S. Appln. No.: 10/542,784)	
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For: USE OF AVIAN ANTIBODIES)	
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REPLY TO RESTRICTION REQUIREMENT

Customer Service Window, Mail Stop Amendment
Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Randolph Building
401 Dulany Street
Alexandria, Virginia 22314

Sir:

The applicants are in receipt of the Office Action mailed February 7, 2007, entirely in the nature of a restriction requirement based purportedly on lack of unity of invention under the applicable PCT Rules. Applicants reply below.

First, however, please note that applicants have claimed priority from their application filed in Sweden on January 30, 2003. As the present application is the U.S. National Phase of a PCT application, whereby the International Bureau of WIPO has forwarded a copy of the priority document

to the PTO, **applicants respectfully request that examiner to acknowledge the receipt of applicants' papers filed under Section 119.**

Restriction has been required between what the PTO deems to be two (2) patentably distinct inventions which lack unity of invention. As applicants must make an election, even though the requirement is traversed, applicants hereby respectfully and provisionally elect Group I, presently claims 20-24 and 39, with traverse and without prejudice.

The PTO takes the position that unity of invention is destroyed by Coleman et al WO 98/14209 which the Office Action says teaches the administration of chicken yolk antibodies to immunocompromised individuals such as infants for the treatment of various diseases including gastrointestinal infections. However, that is too broad a statement of applicants' invention, noting claim 20 which calls for a pharmaceutical composition comprising IgY originating from an egg of a bird hyperimmunized with *Enterobacter cloacae*. Applicants do not see that such subject matter is anticipated or even made obvious by Coleman et al.

Moreover, the examiner should be guided by the second paragraph of MPEP 803, which **requires** a search and examination of an entire application, **even when the restriction requirement is correct**, if such a search and

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Amd. dated March 7, 2007
Reply to Office Action of February 7, 2007

examination would not constitute a "**serious burden**".
Applicants believe that a search of elected Group I,
especially a complete search, would cover the Group II claims.
Once such a search has been conducted, it would not be a
serious burden to also examine claims 25-38. Accordingly,
applicants respectfully request withdrawal of the requirement
and examination of all the claims on the merits.

Applicants now respectfully await the results of a
first examination on the merits.

Respectfully submitted,

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By



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